REMARKS

A. Background

The present Amendment is in response to the Office Action mailed April 16, 2008. Claims 2, 3, 5, 6, 8, 13, 14, and 16-21 were previously canceled, claims 1, 4, 7, 9-12, 15, and 22-25 were previously withdrawn. Claim 26 is amended, claims 22-25, 33, and 34 are canceled, and claims 35-40 are added. [1] Claims 26-32 and 35-40 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. Objection to the Disclosure

The Office Action objected to the disclosure based on certain informalities. In response, Applicant has made the above amendments to the specification to overcome the identified objections. Accordingly, Applicant respectfully requests that the objection to the disclosure be withdrawn.

C. Claim Objections

The Office Action objected to claim 26 because of certain informalities. Claim 26 has been amended herein and Applicant respectfully requests that the objection be withdrawn.

[1] Support for the claim amendments can be found throughout the specification.

D. Prior Art Rejections

1. Rejection Under 35 U.S.C. § 103

The Office Action rejected claims 26-32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,048,338 (*Larson*) in view of U.S. Patent No. 5,800,451 (*Buess*).[2] Applicant respectfully traverses this rejection.

Regarding independent claim 26, the Office Action asserted that *Larson* teaches a "catheter (Fig. 1, #20) comprising: a catheter shaft (Fig. 1, #22) having a distal end (Fig. 1, #42) and a proximal end (Fig. 1, #21), a balloon secured to the distal end (Fig. 1, #24); and a fitting secured to the proximal end (Fig. 1, #26), . . . wherein the bending section includes a spiral cut (Fig. 5, #126) formed in the proximal end, and wherein a fluid impermeable covering is disposed to seal the spiral cut (Fig. 5, #200)," and *Buess* teaches "wherein the proximal end includes a permanently affixed bending section (Fig. 1, #11) having a flexibility (Fig. 1, #23, #24) greater than that of the section of the catheter shaft joining the proximal end (Fig. 1, #17)." (Office Action, page 5.) In support of this statement, the Office Action apparently asserts that the transition member 74, 124 of *Larson* combined with the trocar tube 11 of *Buess* is the same as the "catheter shaft" with a "bending section," as recited, in part, by claim 26.

However, claim 26 has been amended to recite, in part, "a catheter shaft having a distal end and a proximal end, the proximal end including a bending section, the bending section comprising one or more spiral cuts in the catheter shaft, the bending section having a flexibility greater than the flexibility of the portion of the catheter shaft adjacent the bending section." Applicant respectfully asserts that *Larson* and *Buess* do not disclose, teach, or suggest this limitation.

Rather, in direct contrast, *Larson* teaches the use of a transition member "placed within the proximal end of the distal outer section 70" of a catheter. (See, col. 6, ll. 30-34 (emphasis added).) The transition member is a separate component that "may be used in conjunction with the inner member 112, or in conjunction with the inner member 112 and the outer member 200" of the catheter shaft. (See, col. 8, ll. 5-8; see also, col. 8, ll. 46-49.) In addition, "the transition

[2] Although the prior art status of the cited art in this and the remaining rejections is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

member has a spiral cut 126 or the like in the sidewall thereof." (See, col. 8, ll. 17-19.) Thus, the spiral cut 126 is made in the transition member 124 itself and not in the catheter shaft. (See, col. 2, ll. 38-40.)

Also in contrast to claim 26 as currently amended, *Buess* discloses a flexible trocar tube comprising "a spiral jacketed with elastic material." (See, col. 2, ll. 47-51.) The spiral is not a cut in the trocar tube, but can be a "spiral wire spring jacketed with an elastic material." (See, col. 2, ll. 54-56.)

Applicant respectfully submits that the transition member 124 of *Larson* combined with the trocar tube 11 of *Buess* are not the same as a "bending section comprising one or more spiral cuts in the catheter shaft, the bending section having a flexibility greater than the flexibility of the portion of the catheter shaft adjacent the bending section," as recited, in part, by claim 26. Therefore, *Larson* and *Buess* fail to disclose, teach, or suggest all of the elements of claim 26 as currently amended. In view of *Larson* and *Buess's* failure to disclose, teach, or suggest every element of the claimed invention, Applicant submits that there is no *prima facie* case for obviousness and respectfully requests that the rejection of claim 26 be withdrawn. Furthermore, the pending dependent claims are allowable for at least the same reasons.

In addition, Applicant traverses the Examiner's rejection for obviousness on the grounds that *Larson* teaches away from the claimed invention. For example, *Larson* addresses the issue of transitioning between "a proximal stiff segment and a distal more flexible segment." (See, col. 2, ll. 36-41.) To accomplish this, *Larson* discloses the use of a transition member "co-axially disposed relative to the inner member 112 . . . [and] longitudinally positioned to bridge or overlap at least part of the transition in flexibility." (See, col. 2, ll. 8-10.) The addition of the transition member in *Larson* inherently reduces the flexibility and restricts movement of at least a portion of the catheter shaft to provide a transition in flexibility from one segment to the next. In direct contrast, the claimed invention makes a portion of the catheter shaft itself more flexible by including a "bending section comprising one or more spiral cuts in the catheter shaft" as recited, in part, by claim 26. Furthermore, in direct contrast to providing a transition between a "stiff segment and a distal more flexible segment," as taught by *Larson*, (see, col. 2, ll. 36-41), the claimed invention requires that "the bending section hav[e] a flexibility greater than the

flexibility of the portion of the catheter shaft adjacent the bending section," as recited, in part, by claim 26.

Accordingly, *Larson* teaches away from the claimed invention as currently amended. Because *Larson* teaches away from claim 26, Applicant respectfully submits that claim 26, and its dependent claims 27-32, are not rendered obvious by *Larson* and *Buess*.

E. Conclusion

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the August, 2008.

Respectfully submitted,

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